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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056574
Party	Defendant EI Group, LLC
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Date	06/12/2014
Attachments	Registrant EL Group, LLC's Reply Memorandum in Support of its Cross-Motion to Dismiss.pdf(152087 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration of                    EL GROUP, LLC d/b/a Lotuff & Clegg  
Registration No.           :           3,872,561  
Registration Date       :           November 9, 2010  
Mark                       :           LOTUFF & CLEGG  
Cancellation No.       :           92056574

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FRANK CLEGG LEATHERWORKS, LLC,	)
Petitioner,	)
v.	)
EL GROUP, LLC d/b/a LOTUFF & CLEGG,	)
Registrant.	)

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**REGISTRANT EL GROUP, LLC'S REPLY MEMORANDUM IN SUPPORT OF ITS CROSS-  
MOTION TO DISMISS CANCELLATION PROCEEDING**

Registrant EL Group, LLC ("Registrant"), by its attorneys, submits the following Reply Memorandum in Support of Its Cross-Motion to Dismiss Cancellation Proceeding ("Motion") to briefly address inaccurate and erroneous assertions made by Petitioner Frank Clegg Leatherworks, LLC's ("Petitioner") in its opposition to the Motion ("Opposition" or "Opp.").

First, while Petitioner claims that it was improper for Registrant to file the Motion (Opp. 3-5), Petitioner does not set forth any valid reason why the Motion should not be granted. Petitioner concedes that "all of the issues" in this cancellation proceeding will be decided in the current court action between the parties. (Opp. 4.) It is precisely on this basis that Registrant seeks dismissal of this cancellation proceeding. Simply, all parties agree that this cancellation

proceeding, which has already been pending for 18 months, has been rendered moot by the court action. (Motion 6-7.)

Second, having no valid basis to oppose the Motion, Petitioner makes spurious and outright bizarre claims as to Registrant's motivation in filing it; specifically, that Registrant, by seeking to terminate a needless and expensive administrative proceeding, that all parties agree is moot, is somehow attempting to harm Petitioner's reputation or "drain Petitioner's resources." (Opp. 2, 6.) Registrant is unaware of a single instance in which wholly undocumented paranoid about the reputational consequences of a dismissal has served as the basis for prolonging any type of judicial or administrative proceeding. There is absolutely no support for Petitioner's charges regarding Petitioner's motivation, which are false and should be disregarded by the Board.

Third, contrary to Petitioner's assertions (Opp. 4-5), Registrant does not argue in the Motion – nor has it ever argued – that this case should be dismissed because earlier settlement discussions were unsuccessful. Rather, Petitioner fabricates this argument based upon what Registrant can only surmise is Registrant's reference to the settlement discussions in the fact section of its Motion. (Motion 2.) Registrant only mentions the settlement discussions in the context of the entire history of these proceedings, which Registrant set forth in the Motion to support its argument that Petitioner has failed to actively prosecute its claims since it initiated these proceedings on December 12, 2012. (Motion 7-8.)

Finally, in the Motion, Registrant takes the position that, however the Motion is decided, the issues between the Parties should only be litigated once, in the court action. (Motion 8, 9.)

To that end, Registrant states: *"In the event the Board determines that dismissal of the Amended Petition for Cancellation is unwarranted, Registrant respectfully requests that the Board suspend these proceedings until the issues before it are determined in the State Court Action."* (Motion 9 (emphasis added).) In the Opposition, however, Petitioner blatantly misquotes this statement by omitting the emphasized portion above and citing the remainder of the statement and arguing that Registrant's position "undercut[s]" its motion for dismissal. (Opp. 4.) Such backhanded and intentionally misleading tactics should not be tolerated.

The bottom line is that Petitioner provides no basis for why Registrant's Motion should not be granted. It is well settled law that, in general, a case becomes moot, and therefore, nonjusticiable as involving no case or controversy, "when the issues presented are no longer 'live' . . . ." *U.S. Parole Commission v. Geraghty*, 445 U.S. 388, 396 (1980) (quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969)). Because all parties agree that all issues relevant to the cancellation proceeding will be decided in the court action, there is no "live" issue for this Board to consider.

Thus, for the reasons set forth above and in Registrant El Group, LLC's Cross-Motion to Dismiss Cancellation Proceedings, Registrant respectfully requests that the Trademark Trial and Appeal Board grant Registrant's Motion to Dismiss Petitioner's Amended Petition for Cancellation and dismiss Petitioner's Amended Petition for Cancellation. In the event that the Board determines that dismissal of the Amended Petition for Cancellation is unwarranted, Registrant respectfully requests that the Board suspend these proceedings until the issues before it are determined in the court action.

EL GROUP, LLC,  
By its Attorneys,

/s/ James C. Duda

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Dated: June 12, 2014

**CERTIFICATION OF SERVICE**

I hereby certify that a copy of the foregoing was served upon counsel for Petitioner by First Class Mail, postage prepaid, on the 12th day of June, 2014.

/s/ James C. Duda  
James C. Duda

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